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IT IS SO ORDERED.

Burton Perlman
United States Bankruptcy Judge

Dated: October 24, 2008

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No. 08-12331
	)	
Jason W. Guard	)	Chapter 7
Theresa Ann Guard	)	
	)	
Debtors	)	Judge Burton Perlman

ORDER DENYING MOTION

In this Chapter 7 bankruptcy case, debtors filed their petition April 30, 2008. A creditor, Eagle Savings Bank, on August 4, 2008, filed an adversary proceeding to deny dischargeability of its debt by debtors. Without seeking an order of the Court for an F.R.B.P. 2004 examination, creditor, with consent of debtors, conducted a 2004 examination of the debtors. At the examination, debtors did not produce certain documents, advising the creditor that they were not in the possession of the debtors. Creditor now seeks an order of this Court pursuant to F.R.B.P. 2004 to require First Financial Bank, a non-creditor, and a third party so far as the adversary proceeding is

concerned, to produce documents relating, not only to any regarding debtors, but other named entities as well.

The Court denies the motion. The Court holds that in the circumstances here presented, discovery pursuant to F.R.B.P. 2004 may not be sought. We say this because creditor has filed an adversary proceeding. Where that is the case, discovery generally must be conducted pursuant to F.R.B.P. 7026 through 7037. The rationale for this conclusion was well stated by the Court in In re Szadkowski, 198 B.R. 140 (Bankr. D. Md. 1996):

> Discovery under Rule 2004 serves a far different purpose than discovery propounded under the Federal Rules of Civil Procedure. A Rule 2004 examination allows a broad "fishing expedition" into an entity's affairs for the purpose of obtaining information relevant to the administration of the bankruptcy estate. See M4 Enters., Inc., 190 Bankr. At 474; Ecam Publications, Inc., 131 Bankr. At 559. This is what is contemplated in the Rule 2004(b) provision that an examination may be made as to "the debtor's right to a discharge." Thus, discovery under Rule 2004 may be properly employed as a pre-litigation device for assessing whether grounds exist to commence an action to determine the dischargeability of a debt or of the debtor's right to a discharge. See In re Dinubilo, 177 Bankr. 932, 941 (E.D. Cal. 1993). Once an adversary proceeding has commenced, however, discovery may be had only pursuant to the discovery provisions of the Federal Rules of Civil Procedure.

See also In re Bennett Funding Group, Inc., 203 B.R. 24 (Bankr. N.D.N.Y. 1996); 9 Collier on Bankruptcy (15th Edition Rev.) §2004.01[1].

The motion of Eagle Savings Bank is denied.

SO ORDERED.

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